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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,565	02/15/2002	Younglok Kim	I-2-176.SUS	3991
24374	7590	10/18/2006	EXAMINER	
VOLPE AND KOENIG, P.C. DEPT. ICC UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			HOANG, THAI D	
			ART UNIT	PAPER NUMBER
			2616	

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/077,565

Applicant(s)

KIM ET AL.

Examiner

Thai D. Hoang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amendment filed on 07/24//2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/21/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

(a) A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-12 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 5-12 and 15-18 of copending Application No. 10/071917. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

(b) The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application; or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

(i) Claims 1-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/077076. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations recited in claims 1-12 are the same limitations recited in claims 1-12 of copending Application No. 10/077076 respectively, but they have different preambles.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

(ii) Claims 1-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 5-12 and 15-18 of copending Application No. 10/079107. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations recited in claims 1-12 are the same limitations recited in claims 5-12 and 15-18 of copending Application No. 10/079107 respectively, but they have different preambles.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dabak et al, US Patent No. 6,775,260 B1, in view of Rowitch et al, US Patent No. 6,628,702 B1, hereinafter referred to as Dabak and Rowitch respectively.

Regarding claims 1, 5, 9 and 11, Dabak discloses a system called "Space time block coded transmit antenna diversity for WCDMA". Dabak teaches the system, see figs. 1-2 and col. 4, lines 9-52, comprising:

antennas ANT1 112 and ANT2 114 for transmitting CDMA data symbols

the space time transmit diversity (STTD) encoder 110 encodes symbols S having complex conjugate S^* (encoder for encoding said data field producing a second data field having complex conjugates of the symbols of said data field)

The S data code is associated with ANT1 112, and the S^* data code is associated with ANT2 114. Dabak does not disclose the S and S^* data symbols are spread by using a different channelization code. However, Rowitch discloses that the data is process and transmitted over two or more antennas, wherein the processing may include covering the data for each antenna with a particular channelization Walsh code; col. 1, lines 31-35, col. 6, lines 1-21, and col. 10, lines 10-19 (a first and second spreading device for spreading said first and second data fields, wherein said first spreading device spreads said first data field using a first channelization code and said second spreading device spreads said second data field using a second channelization code, each channelization code being uniquely associated with one of said first and second antennas). It would have been obvious to one of ordinary skill in the art at the time the invention was made to adapt the method disclosed by Rowitch into Dabak's system in order to improve signal quality because the interference is reduced.

Regarding claims 2, 6, 10 and 12 Dabak discloses the system perform the step of scrambling the S and S^* by a scrambling code C^K (208, 220, 214) for S and S^* data symbols. See figs. 1-2, col. 4, lines 33-40 (further comprising the step of scrambling said first and second spread data fields by a scrambling code associated with said base station).

Regarding 3 and 7, Dabak discloses that the data symbol S comprises a sub-data S_1 and a sub-data S_2 . See figure 1 (wherein the symbols of said first data field of symbols are grouped into a first and second sub-data field).

Regarding claims 4 and 8, Dabak discloses the STTD encoder 110 encodes the sub-data S_1 and its complex conjugate S_1^* and the sub-data S_2 and its negative complex conjugate $-S_2^*$. See figure 1 (wherein the symbols of said second data field of symbols are grouped into a third and fourth sub-data field, wherein said third sub-data field is the negative complex conjugate of said second sub-data field and said fourth sub-data field is the complex conjugate of said first sub-data field).

Response to Arguments

Applicant's arguments filed 7/24/2006 have been fully considered but they are not persuasive.

Regarding claims 1, 5, 9, and 11, pages 6-10 of the remarks, Applicants argued, "[T]he Rowitch reference merely makes a vague reference in the background section relating to "covering the data for each antenna with a particular channelization code," but does not disclose, teach or suggest that the particular code is different for each antenna or uniquely associated with each antenna."

Examiner respectfully disagrees. Applicants are directed to col. 1, lines 33-35, wherein Rowitch discloses, "[T]he precessing may include, for example, covering the data for each antenna with a particular channelization code (e.g., a particular Walsh symbol)." Furthermore, col. 6, lines 1-21, and col. 10, lines 10-19, Rowitch discloses two

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different Walsh codes w and \overline{w} for data transmission. Thus, Rowitch clearly teaches a particular Walsh code is associated with each antenna.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai D. Hoang whose telephone number is (571) 272-3184. The examiner can normally be reached on Monday-Friday 10:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on (571) 272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TH

Thai Hoang



WELLINGTON CHIN
SUPERVISORY PATENT EXAMINER